

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RED ROCK SOURCING LLC and
CORONADO DISTRIBUTING LLC,

Plaintiffs,

-v-

JGX, LLC and LIBERTY INTERNATIONAL
DISTRIBUTORS, LLC,

Defendants.
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21 Civ. 1054 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

The Court is in receipt of Plaintiffs' letter requesting "a pre-motion discovery conference regarding Defendants David Ghermezian ("Ghermezian"), Eli Berkowitz ("Berkowitz"), and Triple Five Worldwide LLC's ("Triple Five") apparent spoliation of evidence in advance of Plaintiffs' application for a forensic examination of these Defendants' computers, cell phones, tablets and email accounts," Dkt. 150, as well as Defendants Ghermezian, Berkowitz, and Triple Five's response to Plaintiffs' letter, Dkt. 151. It is hereby ORDERED that:

- By March 25, 2022, Defendants Ghermezian, Berkowitz, and Triple Five each shall submit a sworn affidavit setting forth in detail:
 - (1) the process that each Defendant undertook to identify documents and communications responsive to Plaintiffs' requests;
 - (2) what effort each Defendant undertook to preserve all documents and communications potentially relevant to this action, when each Defendant undertook such effort, and if any of the Defendants received a document preservation or litigation hold notice; and
 - (3) whether Defendants failed to preserve any documents or communications potentially relevant to this action, including whether any documents or communications relevant to this action may have been deleted or destroyed, inadvertently or otherwise, and, if so, an explanation of the circumstances under which such relevant documents may have been deleted or destroyed.

- By March 25, 2022, counsel for Defendants Ghermezian, Berkowitz, and Triple Five shall submit a sworn affidavit setting forth in detail:
 - (1) an explanation of the document collection, review, and production in this action in response to Plaintiffs' discovery requests as to each Defendant, including whether any Defendant or counsel retained a third-party vendor to collect the documents from that Defendant's computer(s), cell phone(s), email account(s), and/or other electronic devices, databases, or servers;
 - (2) the search parameters that counsel applied in identifying relevant documents, including the relevant time period and search terms, if any;
 - (3) an explanation of who undertook the responsiveness review for each Defendant's documents and communications; and
 - (4) if counsel for Defendants Ghermezian, Berkowitz, and Triple Five did not undertake the review of the documents and communications for responsiveness, what steps counsel undertook to ensure identification and production of all responsive documents in Defendants' possession, custody, or control, and Defendants' compliance with their discovery obligations under the Federal Rules of Civil Procedure and this Court's orders.
- By March 25, 2022, Plaintiffs shall identify all documents and communications that were produced in this action during discovery that they believe should have been produced by Defendants Ghermezian, Berkowitz, and Triple Five but were not produced by these Defendants, and provide a list of these documents and communications to counsel for Defendants Ghermezian, Berkowitz, and Triple Five.
- By April 8, 2022, Defendants Ghermezian, Berkowitz, and Triple Five shall conduct a search for each of the documents and communications identified by Plaintiffs, and notify Plaintiffs, as to each document or communication, whether they were able to locate such document or communication. If Defendants Ghermezian, Berkowitz, and Triple Five are able to locate any of the documents, they shall produce such documents to Plaintiffs by the April 8, 2022 deadline, accompanied by an explanation of why each such document was not previously produced to Plaintiffs.
- By April 15, 2022, Plaintiffs and Defendants Ghermezian, Berkowitz, and Triple Five shall meet and confer, and submit a joint letter advising the Court regarding the status of the parties' discovery dispute and what issues remaining outstanding that require the Court's attention. If appropriate, the Court will schedule a conference after receipt of the joint letter.

SO ORDERED.

Dated: March 11, 2022
New York, New York



JOHN P. CRONAN
United States District Judge